IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. APPLICATION NO. 4196 OF 2004

Shridhar Suman Vagal ..Applicant.

V/s.

The State of Maharashtra & Anr. .. Respondents.

WITH

CRIMINAL APPLICATION NO. 4081 OF 2004

Shridhar Suman Vagal ..Applicant.

v/s.

State of Maharashtra & Ors. ..Respondents

WITH

CRI. APPLICATION NO. 4442 OF 2004

Shridhar Suman Vagal ..Applicant.

v/s.

State of Maharashtra & Ors. ..Respondents

Shri Ramrao Adik, Sr. Counsel with Shri W.N. Yende with Ashwin Naik i/by B.V. Dhoria & C.F. Bilimoria for Applicant.
Shri V.T. Tulpule, Sr. Counsel with Raja Thakare & A.M. Chimalkar for Respondent No.2.
Shri S.R. Shinde, AGP for Respondent No.1.

CORAM : A.M.KHANWILKAR, J.
Dated : 25.10.2004

PC:-

. All these Applications are disposed of by this common order.

2. The Appilcant had filed Application for being released on interim bail on the ground of illness and for undergoing treatment in the hospital of his choice. That application was rejected by the court below against which present Criminal Application No. 4196/2004 has been filed. During the pendancy of this application, two further applciations have been filed being Criminal Application No. 4081/2004 and Cri. Misc. Application No. 4442/2004. This court had initially granted interim bail to the applicant and the applicant was permitted to undergo treatment in the hospital of his choice. That facility has been extended from time to time.

3. When this matter came up for consideration before me on the earlier occasion, it was pointed out to the counsel for the applicant that in my recent decision in the case of Anil Gote vs. CBI, decided on 29th September, 2004 in Criminal Applciation No. 4023/2004, I have held that even for grant of interim bail in favour of the accused in respect of the offence punishable under the provisions of MCOC Act, the court is obliged to record satisfaction, that the two conditions specified under section 21(4) of the said Act, are fulfilled. If those conditions are not

fulfilled or the court fails to record such satisfaction, the bar to grant bail or for that matter interim bail would operate. In the circumstances, the Applicant was required to be taken into custody. At that stage, the learned counsel for the applicant submitted that instead of taking physical custody of the applicant and removing him to jail, the applicant be allowed to continue with the treatment in the Bombay Hospital, where he was undergoing treatment with jail escort deployed outside his cabin. That request was acceptable to the Respondent and accordingly, this court permitted that arrangement. In other words, the applicant has already been taken in the custody. The applicant was, however, allowed to remain in the hospital to continue with the medical treatment, as no clear opinion from the concerned doctor was available on record to indicate that the applicant was fit for being discharged from the hospital. The matter was, therefore, adjourned to obtain necessary certificate from the concerned doctor. Consequent thereto, both sides relied on certain documents which, according to me, created doubt about the clear opinion on the fitness of the applicant for being discharged. In the circumstances, I directed the respondent to file affidavit of doctor

Anil P. Karapurkar to state in clear terms, whether the applicant is fit for being discharged.

4. Pursuant to the said direction, an affidavit of the said doctor, attached to the Bombay Hospital and under whose case the applicant is undergoing treatment, has been filed by the respondent, sworn on 20th October, 2004. On fair reading of this affidavit, the concerned doctor has clearly opined that upon assessing the status of the applicant, he is fit to be discharged from the hospital. On the other hand, the applicant has relied on the affidavit sworn by the same doctor dated 21st October, 2004. Indeed, Doctor Karapurkar could and ought to have avoided giving two separate affidavits of this nature especially when it is a court matter. Be that as it may, on reading the said affidavit (second), the doctor has opined that the illness of the applicant is of a critical nature and would require emergency treatment at shortest possible time and the treatment to be administered to the applicant is available at a very few places in India. Even on fair reading of this affidavit, assuming that the applicant requires continuous treatment, there is not even a slightest suggestion that the applicant is not fit to be

discharged from the hospital. The fact that the applicant may require continuous supervision or that emergency treatment at the shortest possible time, does not mean that the applicant cannot be discharged from the hospital, as presently advised. I am not going into the discrepancy of the signatures of the concerned doctor occurring in the aforesaid two affidavits, as that is the matter to be examined by the concerned investigating officer. Suffice it to observe that as per the latest affidavit filed by Dr. Anil Karapurkar, the applicant is fit to be discharged from the hospital. The apprehension that the applicant may not receive proper medical treatment at the shortest possible time, therefore, he must be kept in the hospital; to get over this apprehension, it is rightly submitted by the learned APP that the applicant can be housed in the Arthur Road Jail at Mumbai Central, Mumbai which is not far away from the Bombay Hospital where the applicant shall undergo treatment for the time being or any other hospital of similar standing.

5. In the circumstances, all these applications are dismissed with a direction to the respondent in particular to the jail authorities to take custody of

the applicant and place him in the Arthur Road Jail at Mumbai Central and also provide him necessary medical facilities as may be required and advised by the concerned doctor competent on the subject of ailment of the applicant. In case of any emergency, the applicant can be taken to the nearest hospital of his choice at his expenses by the jail authority. In other words, if any emergency treatment is not possible in the jail premises, the applicant be taken to the nearest hospital of his choice at the cost of the applicant.

. Parties to act on an authenticated copy of this order.

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